Filed 4/1/10 P. v. Chaidez CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. GILBERT CHAIDEZ, Defendant and Appellant.	E047417 (Super.Ct.No. FSB042530) OPINION

APPEAL from the Superior Court of San Bernardino County. Arthur Harrison, Judge. Affirmed.

Cathy A. Neff, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and James D. Dutton and Melissa Mandel, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found appellant and defendant Gilbert Chaidez guilty of two counts of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a), counts 1 and 3) and one count of receiving stolen property (Pen. Code, § 496, subd. (a), count 2).[1] The trial court sentenced him to a total state prison term of three years eight months.

On appeal, defendant contends that 1) the sentence on count 2 should have been stayed pursuant to section 654, and 2) the restitution order with regard to the victim in count 3 must be stricken. We affirm.

FACTUAL BACKGROUND

In October and November 2003, the San Bernardino County Sheriff's Office set up an undercover sting operation in the form of a fictitious business in Joshua Tree called Low Desert Liquidators (LDL). The goal of the operation was to buy stolen property from people in the community. Officers Daniel Finneran and Rick Roelle worked the sting operation together. The back office at LDL was equipped with audio and video equipment to record any transactions.

During the night of October 22, 2003, a bronze 2000 Toyota Land Cruiser was stolen from Helen and Lila Sossa[2] from the driveway of their home. There was a Bank of America check in the name of Helen Sossa for $800 in the vehicle. They reported the vehicle stolen the next day.

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[1] All further statutory references will be to the Penal Code unless otherwise noted.

[2] The record initially shows the spelling of the victims' last name to be "Sosa." However, when Lila Sossa testified at the restitution hearing, she spelled her last name as "Sossa."

On October 24, 2003, defendant arrived at LDL in the stolen 2000 Toyota Land Cruiser. Officer Roelle met defendant in the parking lot, drove the vehicle around the block, and went back to LDL to make a deal. Officer Roelle gave defendant $800 in cash for the Land Cruiser. Defendant presented Officer Roelle with the $800 personal check belonging to Helen Sossa. He asked Officer Roelle if he (Roelle) had a connection to cash the check. If he did, defendant said he would be willing to split the money with him. Officer Roelle agreed.

On November 7, 2003, a white 2001 Ford F150 truck was stolen from a car dealership. It was reported stolen on November 8, 2003. On November 8, 2003, defendant arrived at LDL with the stolen Ford F150 truck. Officer Roelle met defendant in the parking lot, got into the truck, and went for a test drive. While they were driving, defendant told Officer Roelle that he stole the truck off the dealer lot. After they finished the test drive, Officer Roelle took defendant back into the office to do the sales transaction. Defendant was given $500 in cash for the truck.

ANALYSIS

I. Section 654 Did Not Apply

Defendant contends the trial court erred in imposing a concurrent sentence on count 2 because the conduct underlying the convictions in count 1 (unlawful taking of a vehicle) and count 2 (receiving stolen property) were committed with the single objective of stealing property from the victim for monetary gain. We disagree.

A. *Section 654*

Section 654, subdivision (a) provides, in pertinent part, that: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. . . ." "Section 654 precludes multiple punishments for a single act or indivisible course of conduct. [Citation.]" (*People v. Hester* (2000) 22 Cal.4th 290, 294.)

"It is defendant's intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible. [Citations.] We have traditionally observed that if all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.] [¶] If, on the other hand, defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.]" (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

In other words, "[d]ifferent criminal acts 'may be divisible even though "closely connected in time and a part of the same criminal venture."' [Citations.] The question is to be resolved upon the facts of each case. [Citations.]" (*People v. DeLoach* (1989) 207 Cal.App.3d 323, 338.)

B. *Procedural Background*

At the sentencing hearing, defendant asked the court to run all the sentences concurrently, asserting that the crimes were not independent of each other. Defense counsel argued that counts 2 and 3 "occurred at the same time the check was in the car and he delivered the check to the officer when he delivered the car."[3]

The prosecutor responded: "The two offenses that occurred on the same date required additional acts and intent and planning on behalf [of] the defendant th[a]n just the auto theft. [¶] The defendant was convicted of receiving stolen property because he took the check out of the victim's car and in a separate criminal undertaking offered to split the money with the undercover officer as the undercover officer was able to cash the check. [¶] I think that they are completely separate and involve separate intents and are not in any way [section] 654 or worthy of being run concurrent."

The trial court stated, with regard to count 2, that "at the time of the taking of the check it was in a vehicle. I don't think there was any specific conduct as an opportunistic act. The defendant offered the check and to split the proceeds at the sting operation. [¶] I will not further penalize the defendant. I will select a middle term of two years for that to run concurrent. I think the primary objective and the victim [were] identical to [those] in Count 1. That would be to run concurrent to the sentence in . . . Count 1 . . . ."

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[3] Although trial counsel referred to counts 2 and 3, it is clear he was talking about counts 1 and 2, which involved the taking of the Land Cruiser and the stolen check.

C. *The Court Properly Ran Defendant's Sentence Concurrently*

Defendant was found guilty of unlawfully taking a vehicle (count 1) and receiving stolen property (count 2). In finding defendant guilty of count 2, the jury had to find that 1) defendant received and/or sold property that had been stolen, and 2) when he received the property, he knew it had been stolen. "'To receive property' means to take possession and control of it." (Italics omitted.)

The question is whether the unlawful taking of the Land Cruiser in count 1 and the receiving of the stolen check in count 2 were divisible or indivisible transactions. Defendant argues he stole both the car and the check during an indivisible course of conduct, for the same purpose of taking the stolen goods and turning them into cash. However, the evidence clearly demonstrates that defendant had multiple criminal objectives. He unlawfully took the Land Cruiser with the intention of selling it to make money. There happened to be a check in the stolen car. Once he stole the car and discovered the check, defendant was also guilty of receiving stolen property (the check), since he had taken possession and control of it. At that point, his offenses were merely incidental to each other. However, as the People point out, defendant did not simply drive away with the check in the car. He attempted to have the check cashed. In other words, he sought to profit from the stolen check, *apart* from gaining proceeds from the stolen car. Defendant's conduct of receiving stolen property was divisible from his conduct of unlawfully taking the car.

Defendant claims the instant case is most similar in facts to *People v. Bauer* (1969) 1 Cal.3d 368. However, *Bauer* is inapposite. In that case, the defendant was convicted of burglary, robbery, grand theft, and automobile theft. (*Id*. at p. 371.) The defendant and his cohorts entered the house of three elderly women under false pretenses, tied the victims up, took numerous items of their personal property, and drove away in one of the victim's cars. (*Id*. at p. 372.) The defendant was given concurrent sentences of imprisonment for robbery and auto theft. (*Id*. at pp. 371-372.) On appeal, he argued that section 654 barred the imposition of punishment for both robbery and car theft. The court agreed and explained that, under the principles of section 654, "the taking of several items during the course of a robbery may not be used to furnish the basis for separate sentences." (*People v. Bauer*, *supra*, at pp. 376-377.) The court noted that the evidence showed the theft of the car was not an afterthought, but the robbers formed the intent to steal the car while they were ransacking the house and carrying the stolen property to the garage. (*Id*. at p. 377.) The court held that section 654 precluded double punishment under the specific circumstances of that case. (*People v. Bauer*, *supra*, at p. 378.)

The facts of *Bauer* clearly demonstrated an indivisible, continuous course of action, where the defendant stole the victims' personal property and stole one of the victim's cars to facilitate the robbery and leave the scene of the crime with the stolen goods. The court properly applied section 654, since all of the offenses were the means of facilitating one objective. (See *People v. Harrison*, *supra*, 48 Cal.3d at p. 335.)

In contrast, as discussed *ante*, defendant's actions in the instant case displayed multiple objectives. Thus, section 654 did not apply. We note that the trial court apparently agreed with defendant that counts 1 and 2 were *not* independent of each other, as it stated that the "primary objective and the victim" were the same in both counts. Nonetheless, the court ran the sentences in counts 1 and 2 concurrently. While we disagree with the court's finding that defendant had only one objective, we affirm its decision to run the sentences in counts 1 and 2 concurrently.

II. The Court Properly Determined the Amount of Restitution Owed

Defendant contends the $4,240 restitution order with regard to count 1 must be reversed, since the evidence failed to prove he caused any damage to the victim's car. We find no abuse of discretion.

A. *Standard of Review*

"[W]e review the trial court's restitution order for abuse of discretion. [Citations.] . . . Under this standard, while a trial court has broad discretion to choose a method for calculating the amount of restitution, it must employ a method that is rationally designed to determine the surviving victim's economic loss." (*People v. Giordano* (2007) 42 Cal.4th 644, 663-664, fn. omitted.)

B. *Background*

The probation department initially recommended that defendant pay restitution in the amount of $3,500 to Lila Sossa, the victim in count 1 (the victim). At the time of the sentencing hearing, the court felt that the amount requested was excessive, since it did not

recall the car being damaged. The court set a further hearing, in order for the probation department to present evidence to support the requested amount.

A restitution hearing was held on May 7, 2009. The victim testified she was the owner of the bronze Toyota Land Cruiser that was stolen. She said that, 28 days after her car was stolen, she was notified that it was at a tow yard. When she saw the car, she was told it could not be driven. It apparently was not running, and the tires and rims were blown out. It took three months for the car to be repaired. The victim paid an insurance deductible of $1,000 and rented a car for $170 per week. An estimated $1,200 worth of personal property was in the car when it was stolen, including a camera, cell phone, camping gear, files, and binoculars. These items were not recovered. The court noted the earlier probation memo, which stated that the victim was requesting $3,500 in restitution. The victim replied that such amount did not include the personal property. Thus, the total requested was $4,240, which included the deductible, rental car, and personal property. The court ordered defendant to pay $4,240 in restitution.

C. *There Was No Abuse of Discretion*

Defendant argues there was no evidence to prove that the damage to the car was caused by his conduct. He points out the car was driven into the LDL parking lot, and there was no evidence it was damaged at the time he sold it to the undercover police officers. He also points out that there was no evidence he had any contact with the car after he left the lot.

Section 1202.4, subdivision (f) provides, in relevant part, that "in every case in which a victim has suffered economic loss *as a result of the defendant's conduct*, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." (Italics added.) Section 1202.4, subdivision (f) "unequivocally requires restitution of a victim for 'economic loss as a result of the defendant's conduct.' A victim's restitution right is to be broadly and liberally construed. [Citations.]" (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500-501.)

Here, the record does not specifically indicate the condition of the Land Cruiser when defendant brought it to LDL, except that it could be driven. There is no explanation in the record for the damage the car sustained after defendant sold it. However, we infer that the damage described by the victim at the restitution hearing was sustained at some point after defendant stole the car. Given the statutory language of section 1202.4, we conclude that the expenses the victim was compensated for came within the broad parameters of the restitution statute and the intent to make the victim whole. (See *People v. Mearns*, *supra*, 97 Cal App.4th at p. 501.) Even though defendant did not necessarily *cause* the damage done to the victim's car, the victim undoubtedly suffered economic loss *as a result of* defendant's conduct. The record indicates that nothing was wrong with the car at the time it was stolen. However, when it was returned to her, it could not be driven, and the tires and rims were blown out. In other words, if

defendant had not unlawfully taken the victim's car, the car would not have sustained the same damage, and the victim would not have suffered economic loss.

The court ordered the $4,240 restitution to make the victim whole. We cannot say the court abused its discretion in doing so.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.